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10/754,460

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Martin Schock

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EXAMINER

RIGGLEMAN, JASON PAUL

ART UNIT

PAPER NUMBER

1792

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12/05/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/754,460	Applicant(s) SCHOCK, MARTIN	
	Examiner JASON P. RIGGLEMAN	Art Unit 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 41-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 41-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/14/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. Applicant's amendment filed 8/14/2008 has been received. Current pending claims are 41-58. Claims 1-40 have been cancelled. Claims 41-52 and 56 have been amended.

Response to Arguments

2. Applicant's arguments filed, 8/14/2008, have been fully considered. The applicant has eliminated "the rear rail portion" limitation from the claims. Apparently, *the applicant believes eliminating subject matter from the claims makes them narrower* – "applicant has amended claim 41 herein to delete the subject matter relation to the provision of a rear rail portion having a partial section...applicants amended claim 1 is limited to the provision of a rear cage portion...". Applicant is reminded that the claims may comprise additional elements and deletion does not impose negative claim limitations. Additionally, the applicant has clearly attacked the references in a piecemeal manner. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The applicant argues that Tadaharu does not teach a rear cage portion nor a cage for rolling members having a rear cage portion. This is irrelevant since Wied is the primary reference and teaches the limitation of the cage members. Tadaharu was merely used to modify the reference to teach the openings in the railing. Examiner states it would be obvious to modify any component of the rail/cage, etc. with holes, as taught by Tadaharu to effect cleaning by the rotating spray arm. In response to the applicant's arguments that it would not have been

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obvious to use Wied in a dishwasher (presumably in reference to claim 58) this is not persuasive. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The remaining argument (apparently, that it is not obvious to modify Tadaharu with Wied) is not understood and the applicant is reminded that Wied is modified by Tadaharu and not vice-versa; therefore, the argument that it would not be obvious to modify Tadaharu with telescopic drawer guides is moot. NOTE: the limitation of a "cage for rolling members" adds little structure to the claim. The applicant is encouraged to further define *exactly* the structure of the "cage" for rolling members. It is especially confusing when discussing the limitations of a "rear cage portion", etc. The rejections are maintained and updated to reflect the minor amendments to the claims, below.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 41-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wied (EPO Publication No. EP0768050) in view of Tadaharu (JP Patent Publication No. JP2000-254087).

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5. Wied teaches the rolling members and the specific details of a roller-type rail limitations, Figs. 2 & 7. Wied teaches a plurality of guide rails (20) for a drawer guide. One guide rail is associated with the drawer (see rail 20) and another is associated with the chamber (see rail 22). A rolling member assembly (32) is present for guiding one of the guide rails in a displaceable manner on another guide rail in a direction of movement of the drawer. There is a cage (30) for the rolling members. There is a rear cage portion on the cage in which the rear cage portion includes at least one partial section that extends in a direction of movement of the drawer. At least one rolling member assembly of the drawer guide comprises rolling members in the forms of balls (32). At least one rolling member assembly of the drawer guide has rolling members which are in single-point contact with a rolling member running track of a guide rail of the drawer guide that is associated with the rolling members, Fig. 7. The drawer guide allows the drawer to be withdrawn substantially completely from the interior of the chamber. The chamber comprises a washing machine chamber (dishwashing machine chamber). Note: any chamber is capable of being used for washing dishes, Fig. 1.

6. Wied does not teach a flow of liquid or gas through the drawer guide for the rolling members (in rear cage portion); however, Tadaharu teaches a dishwashing machine having guide rails (rack rails 15 and 16) for a drawer in a chamber through which there is a flow of liquid, Figs. 7-10. The guide rails are mounted to the interior wall of the chamber. The guide rail is provided with fluid passages (15a and 16a) in such a manner that a liquid or a gas present in the chamber is adapted to flow through out the guide rail when the chamber is in use. The fluid passages (through-holes) in the rack rail correspond to the rotation-locus of the washing nozzle, paragraph [0019] of English machine translation. Also, it is taught to provide the cleaning holes

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through the entire length of the rack rail, paragraph [0019] of English machine translation. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Tadaharu with Wied to create a smoothly operating rail/cage (having holes in the entire length of drawer guide) having self-cleaning capability to achieve the expected result.

7. In regards to claims 42-43, 46, and 48-49, these limitations, such as size of the fluid openings, as discussed in the specification – are determined by rudimentary experiments. It has been held that a change in cause effective variables is not patentable (*In re Woodruff*, 16 USPQ2d 1934). It would have obvious to one of ordinary skill in the art at the time of then invention to modify Wied, as modified by Tadaharu, to find the optimum hole size/hole position for a given rail/cage, etc. thickness.

8. In regards to claims 47 and 51, Wied, as modified by Tadaharu does not teach congruent fluid passage openings which are aligned when the drawer guide is pushed completely into the interior of the chamber; however, it has been held that an obvious choice in design is not patentable, absent any showing of criticality, (*In re Kuhle*, 188 USPQ 7). It would have obvious to one of ordinary skill in the art at the time of then invention to modify Wied, as modified by Tadaharu, to create a method for cleaning the rack (by having the openings aligned in the collapsed sections of the drawer guide/rail/cage) when the door is shut and the drawer guide pushed completely into the interior of the chamber to achieve the expected result.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P. Rigglesman whose telephone number is 571-272-5935. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Jason P Riggleman
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